

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent BriteSmile, Inc. is a lobbyist employer located in Walnut Creek. For various quarterly reporting periods between January 1, 1999 and March 31, 2001, Respondent failed to timely file five (5) lobbyist employer reports. This matter arose from a referral from the Secretary of State's Office.

For the purposes of this stipulation, Respondent's violations of the Political Reform Act (the "Act")<sup>1</sup> are stated as follows:

- COUNT 1: Respondent BriteSmile, Inc. failed to timely file a Report of Lobbyist Employer (Form 635) for the quarter ending March 31, 1999, by the April 30, 1999 due date, in violation of Section 86117, subdivision (a).
- COUNT 2: Respondent BriteSmile, Inc. failed to timely file a Report of Lobbyist Employer (Form 635) for the quarter ending September 30, 1999, by the November 1, 1999 due date, in violation of Section 86117, subdivision (a).
- COUNT 3: Respondent BriteSmile, Inc. failed to timely file a Report of Lobbyist Employer (Form 635) for the quarter ending March 31, 2000, by the May 1, 2000 due date, in violation of Section 86117, subdivision (a).
- COUNT 4: Respondent BriteSmile, Inc. failed to timely file a Report of Lobbyist Employer (Form 635) for the quarter ending September 30, 2000, by the October 31, 2000 due date, in violation of Section 86117, subdivision (a).
- COUNT 5: Respondent BriteSmile, Inc. failed to timely file a Report of Lobbyist Employer (Form 635) for the quarter ending March 31, 2001, by the April 30, 2001 due date, in violation of Section 86117, subdivision (a).

### **SUMMARY OF THE LAW**

An express purpose of the Act, as set forth in Section 81002, subdivision (b), is to ensure that the activities and finances of lobbyists are disclosed, so that improper influences are not directed at public officials. To that end, the Act requires registration and reporting by individuals and entities that make or receive payments for the purpose of influencing decisions of

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

the State Legislature and state administrative agencies under the lobbying provisions contained in Sections 86100 through 86300.

One feature of the lobbyist reporting system, found at Section 86116, is that any person who qualifies as a “lobbyist employer” is required to file periodic reports containing information about the lobbying activities being conducted on behalf of the lobbyist employer. Under Section 82039.5, a person, other than a lobbying firm, qualifies as a “lobbyist employer” if the person either: (a) employs one or more lobbyists, for economic consideration, for the purpose of influencing legislative or administrative action; or (b) contracts for the services of a lobbying firm, for economic consideration, for the purpose of influencing legislative or administrative action.

Section 86117, subdivision (a), provides that the periodic reports required by Section 86116 must be filed by the end of the month following each calendar quarter.<sup>2</sup> Section 86118 requires that the periodic reports of lobbyist employers shall be filed with the Secretary of State.

### **SUMMARY OF THE FACTS**

Respondent BriteSmile, Inc. is a lobbyist employer located in Walnut Creek. Respondent has been a lobbyist employer since January 1, 1999. Respondent qualified as a lobbyist employer throughout that time under Section 82039.5, subdivision (b), by employing a lobbying firm to influence legislative or administrative action.

For various quarterly reporting periods between January 1, 1999 and March 31, 2001, Respondent failed to timely file five (5) lobbyist employer reports, as follows:

<b>Count</b>	<b>Reporting Period</b>	<b>Report Required To Be Filed</b>	<b>Date Due</b>	<b>Date Filed</b>
1	1/1/99 to 3/31/99	Lobbyist Employer Report	4/30/99	3/7/02
2	7/1/99 to 9/30/99	Lobbyist Employer Report	11/1/99	3/4/02
3	1/1/00 to 3/31/00	Lobbyist Employer Report	5/1/00	3/4/02
4	7/1/00 to 9/30/00	Lobbyist Employer Report	10/31/00	3/4/02
5	1/1/01 to 3/31/01	Lobbyist Employer Report	4/30/01	3/4/02

By failing to timely file the quarterly lobbyist employer reports described above, Respondent BriteSmile, Inc. committed five violations of Section 86117, subdivision (a).

For each of the first four delinquent quarterly reports, due from April 30, 1999 through October 31, 2000, the Secretary of State’s Office sent two letters to Respondent, advising Respondent that each report was past due. The second letter regarding each report, for three of the four quarterly reports for which letters were issued, advised Respondent that failing to file the report would result in a referral to the Enforcement Division of the Fair Political Practices Commission.

<sup>2</sup> Regulation 18116 dictates that if the last day of the month falls on a Saturday, Sunday, or official holiday, the filing deadline is extended to the next regular business day.

The Political Reform Division of the Secretary of State referred the matter of Respondent's five delinquent lobbyist employer reports to the Enforcement Division on October 3, 2001.

On November 8, 2001, Enforcement Division Political Reform Consultant Linda Moureaux left a voicemail message for the Chief Financial Officer / Vice-President of BriteSmile, Inc., Peter Hausback, regarding the five delinquent lobbyist employer reports.

When Respondent BriteSmile, Inc. did not return Ms. Moureaux's call, Ms. Moureaux referred the matter to an Investigator. On February 27, 2002, Enforcement Division Investigator Charles Bilyeu attempted to contact via telephone President / Chief Operations Officer Ms. Linda Oubre of BriteSmile, Inc., regarding the delinquent lobbyist employer reports. On February 28, 2002, Investigator Bilyeu received a telephone call from Mr. Craig Hunter, an attorney with the firm of Livingston & Mattesich, LLP. Mr. Hunter informed Investigator Bilyeu that his firm had been retained by Respondent, and was in the process of remedying the delinquent reporting problem. Mr. Hunter stated the reports were forthcoming.

On March 4, 2002, Respondent filed four of the five delinquent lobbyist employer periodic reports for the periods July 1, 1999 through September 30, 1999, January 1, 2000 through March 31, 2000, July 1, 2000 through September 30, 2000, and January 1, 2001 through March 31, 2001. On March 7, 2002, Respondent filed the remaining delinquent lobbyist employer periodic report for the period of January 1, 1999 through March 31, 1999.

## CONCLUSION

This matter consists of five counts, which carry a maximum possible administrative penalty of thirteen thousand dollars (\$13,000).<sup>3</sup>

The typical administrative penalty for failing to timely file a lobbying report has historically ranged from \$1,000 to \$1,500 per violation. In this case, as Respondent neglected to file lobbyist employer reports for multiple quarters over a three year period, and disregarded at least eight notifications from the Secretary of State's Office, an amount at the higher end of that penalty range is appropriate.

Accordingly, the facts of this case, as well as the aforementioned aggravating factors, justify imposition of the agreed upon penalty of seven thousand five hundred dollars (\$7,500).

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<sup>3</sup> Prior to January 1, 2001, Government Code section 83116 provided that violations of the Political Reform Act were punishable by an administrative penalty of up to \$2,000. Proposition 34, approved by voters in November 2000, repealed those penalties and added the new section 83116, which provides that violations committed on or following January 1, 2001 are punishable by administrative penalties of up to \$5,000 per violation. Because the violations in counts one through four were committed prior to January 1, 2001, the maximum penalty applicable to each violation is \$2,000. The violation in count five, having been committed after January 1, 2001, carries a maximum penalty of \$5,000.